

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Nov 12, 2019**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SEAN F. McAVOY, CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

MONICA PESINA, (01),  
NICHOLAS SEAN CARTER, (02),

Defendants.

No. 4:19-CR-06063-SMJ-01  
4:19-CR-06063-SMJ-02

**CASE MANAGEMENT ORDER**

The Court now enters the following Case Management Order, which sets forth the hearings and requirements the parties will observe in this matter. To the extent this Order conflicts with any previously-entered Orders in this matter, this Order shall govern. All counsel are expected to carefully read and abide by this Order. The Court will grant relief from the requirements in this Order only upon motion and good cause shown.

**IT IS HEREBY ORDERED:**

- 1. Local Criminal Rules.** Counsel shall comply with the Eastern District of Washington Local Criminal Rules of Procedure (LCrR), except where specifically modified below or by subsequent Order.

1       **2. Emailing the Court.** Where this Order requires counsel to email  
2 documents to the Court, all documents shall be attached to the email  
3 in Microsoft Word (.doc/.docx) or rich-text (.rtf) format. The subject  
4 line of each email shall be formatted as follows:

5                   **[Case No.]; [Case Name]; [Title of Document]**

6                   (e.g.: *CR-13-9999-SMJ; USA v. Doe; Trial Brief*)

7       **3. Discovery**

8       **A.** All discovery documents must be Bates-stamped with a unique  
9 identifier and must be produced digitally in a text-searchable  
10 format. The Court will grant relief from this requirement only  
11 in exceptional circumstances, upon motion and good cause  
12 shown.

13       **B.** Production of discovery shall be governed by Local Criminal  
14 Rule 16. *See* LCrR 16.

15       **C.** The Court presumes a request for discovery and disclosure  
16 under Federal Rules of Evidence 404(b), 608(b), and 609, *Brady*  
17 *v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405  
18 U.S. 150 (1972), *United States v. Henthorn*, 931 F.2d 29 (9th  
19 Cir. 1991), and their progeny, and as such these items are  
20 ordered disclosed by the deadline set forth in LCrR 16.

1           **4. Expert-Witness Summaries**

2           **A.** When each party produces to opposing counsel summaries of its  
3 expert-witness testimony for which disclosure is required under  
4 Federal Rule of Criminal Procedure 16 and Local Criminal Rule  
5 16, counsel shall also email an electronic copy of the summary  
6 to the Court at [MendozaOrders@waed.uscourts.gov](mailto:MendozaOrders@waed.uscourts.gov).

7           **B.** All summaries of expert witness testimony must conform to  
8 Federal Rule of Criminal Procedure 16, Local Criminal Rule 16,  
9 and applicable case law interpreting those Rules. The Court will  
10 not permit an expert witness to testify about opinions which are  
11 not explicitly expressed in that expert's summary. *See, e.g.,*  
12 *United States v. W.R. Grace*, 526 F.3d 499 (9th Cir. 2008).

13           **5. Motions Practice**

14           **A. Generally.** All motions shall either be: a) noted for hearing  
15 without oral argument fourteen (14) days after filing, or b) noted  
16 for hearing with oral argument at the pretrial conference  
17 pursuant to Local Criminal Rule 12(c). Responses and replies  
18 to motions must be filed in accordance with Local Criminal Rule  
19 45 and 47, which incorporate the requirements of Local Rule  
20 7.1. For motions heard at the pretrial conference, parties may

1 agree to an alternative briefing schedule without leave of the  
2 Court, provided all responses and replies are filed no later than  
3 five days before the pretrial conference.

4 **B. Expedited Hearing.** Any party seeking an expedited hearing on  
5 a time-sensitive matter must comply with Local Criminal Rule  
6 12(c)(3).

7 **6. Witness Testimony.** At any hearing, including trial, in which witness  
8 testimony is given, the witness must testify in Court and, absent  
9 exceptional circumstances, may not appear by telephone or video  
10 conference.

11 **7. Trial Continuances**

12 **A. Motion Deadline.** All motions to continue the trial must be  
13 heard before or at the pretrial conference. Any motion to  
14 continue trial made after the pretrial conference has  
15 occurred will not be granted absent exceptional  
16 circumstances.

17 **B. Statement of Reasons.** If the Defendant seeks a continuance, a  
18 Speedy Trial Waiver and Statement of Reasons in support of the  
19 motion to continue must be filed contemporaneously with the  
20

1 motion.<sup>1</sup> The Statement of Reasons must 1) be signed by the  
2 Defendant, 2) be signed by a certified translator, if applicable,  
3 and 3) indicate the latest date upon which Defendant is willing  
4 to proceed to trial.

5 **C. Procedure.** Before filing a motion to continue, counsel shall  
6 first contact the Courtroom Deputy at (509) 943-8173 to obtain  
7 new pretrial conference and trial dates consistent with the length  
8 of the requested trial continuance. Thereafter, counsel shall  
9 confer with opposing counsel regarding case management  
10 deadlines<sup>2</sup> consistent with the new pretrial conference and trial  
11 date. **All motions to continue must include proposed case**  
12 **management deadlines (either joint or individual) to ensure**  
13 **the to-be-imposed deadlines are best suited to this case.**

## 14 **8. Pretrial Conference**

15 **A.** The Pretrial Conference is **SET** for **December 19, 2019**, at  
16 **11:30 AM** in **RICHLAND**. At this hearing, the Court will hear  
17 **ALL** pretrial motions that are noted for oral argument.  
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19 <sup>1</sup> The Court's Speedy Trial Waiver and Statement of Reasons form can be found at the following link:  
20 [http://www.waed.uscourts.gov/sites/default/files/forms/smj\\_stmt\\_reasons\\_mot\\_to\\_cont.pdf](http://www.waed.uscourts.gov/sites/default/files/forms/smj_stmt_reasons_mot_to_cont.pdf).

<sup>2</sup> A form with the Court's standard case management deadlines can be found at the following link:  
<http://www.waed.uscourts.gov/sites/default/files/forms/Proposed%20Case%20Management%20Deadlines.pdf>.

1           **B.** All pretrial conferences are scheduled to last no more than  
2           **thirty (30) minutes**, with each side allotted **fifteen (15)**  
3           **minutes** to present their own motions and resist motions by  
4           opposing counsel. If any party anticipates requiring longer than  
5           fifteen minutes, that party must notify the Courtroom Deputy at  
6           least seven (7) days prior to the hearing. **Any party who fails**  
7           **to provide this notice will be limited to fifteen (15) minutes.**

## 8           **9. Trial**

9           **A.** Trial is set for **January 13, 2020**, at **9:00 AM** in **RICHLAND**.

10          The **final** pretrial conference will begin at **8:30 A.M.**

## 11          **10. Exhibit Lists**

12          **A.** On **January 7, 2020**, after conferring with counsel at the pretrial  
13          conference each party shall file a list of exhibits the party intends to  
14          introduce at trial. Each party shall also email copies of their exhibit  
15          list to the Court at [MendozaOrders@waed.uscourts.gov](mailto:MendozaOrders@waed.uscourts.gov). The parties  
16          shall provide their exhibit list in the following format:

Ex. #	Admitted	Description
1		Photograph of items seized
2		Aerial video surveillance from 1/1/2011. Start Time: 01:03:23 End Time: 01:09:54

Exhibit lists shall include a unique exhibit number and a brief description of the exhibit. For all exhibits consisting of an audio or video file, the exhibit list must designate the precise beginning and ending time indexes of the portion of the file the party intends to use at trial.

**B.** The USAO shall consecutively number their exhibits from **1 to 999**.

In single-defendant cases, Defendant shall consecutively number exhibits from **1000 to 1999**; in multi-defendant cases, Defendants shall consecutively number exhibits from x000 to x999, substituting “x” for each Defendant’s assigned case identifier (e.g. Defendant 3 would number exhibits from 3000 to 3999, etc.). Exhibits shall be pre-marked for identification before trial commences.

**11. Witness Lists.** On **January 7, 2020**, after conferring with counsel at the pretrial conference, each party shall file and serve a list of witnesses that party intends to call to testify at trial. **The witness list must identify the existence, but need not include the name, of any CI the USAO intends to call to testify.** Parties shall email copies of their witness list to the Court at [MendozaOrders@waed.uscourts.gov](mailto:MendozaOrders@waed.uscourts.gov).

**12. Trial Briefs, Proposed Jury Instructions and Verdict Form, and Requested Voir Dire.** On **January 3, 2020**, after conferring with counsel at

1 the pretrial conference, each party shall file a trial brief, proposed jury  
2 instructions and verdict form, and requested voir dire, in accordance with the  
3 requirements below. Each party shall email copies to the Court at  
4 [MendozaOrders@waed.uscourts.gov](mailto:MendozaOrders@waed.uscourts.gov).

5 **A. Trial Briefs.** Trial briefs shall not exceed twenty (20) pages  
6 without prior Court approval, upon motion and good cause shown.

7 **B. Proposed Jury Instructions and Verdict Form.** Jury instructions  
8 shall 1) address issues that are unique to the case, and 2) include  
9 instructions regarding the elements of each charge or defense. If a  
10 Ninth Circuit Model Jury Instruction exists for a particular charge or  
11 defense, the parties shall provide the model instruction or shall submit  
12 argument as to why the instruction is inadequate or no longer  
13 supported by law. Proposed jury instructions shall be accompanied by  
14 a proposed verdict form. **The parties must confer to develop joint**  
15 **proposed jury instructions and the verdict form.** The Court will  
16 only accept an individual party's proposed jury instructions on those  
17 points/issues upon which the parties could not agree, and only if the  
18 party's memoranda accompanying the individually-proposed  
19 instruction(s) sets forth the legal authority and justification for why the  
20 instruction is necessary.



1           **C. Requested Voir Dire.** The parties may request that the Court  
2           include specific questions during the Court’s standard voir dire.  
3           Requested voir dire shall not duplicate information elicited in  
4           the Clerk’s Office Jury Questionnaire (“COJQ”) and the Court’s  
5           Criminal Jury Trial Procedures Letter.

6           **13. Exhibit Binders.** On **January 3, 2020**, after conferring with counsel  
7           at the pretrial conference, each party must provide to all other parties and to  
8           the Court a Bates-stamped copy of all trial exhibits — or, in the case of  
9           physical exhibits, a photograph or other reproduction of the exhibit — the  
10          party intends to introduce at trial. All trial exhibits shall be organized  
11          sequentially by exhibit number in a three-ring binder.

12          **14. JERS.**

13          **A.** The Court utilizes the Jury Evidence Recording System (JERS),  
14          a system that makes electronic evidence available in the jury room  
15          during deliberations. **Counsel shall promptly consult the Court’s**  
16          **“JERS Instructions for Attorneys”<sup>3</sup> to ensure they acquire, retain,**  
17          **and provide evidence to the Court in the necessary format.**

18  
19  
20          <sup>3</sup> This document can be found on the Court’s public website at the following link:  
<http://www.waed.uscourts.gov/content/jers-jury-evidence-recording-system-information-attorneys>.

1           **B.**     On **January 7, 2020**, after conferring with counsel at the pretrial  
2           conference, each party who intends to introduce evidence at trial must  
3           supply a CD, DVD, or USB drive to the Courtroom Deputy containing  
4           all of that party's exhibits in the required format. Counsel may contact  
5           the Courtroom Deputy at (509) 943-8173 with any questions.

6           **15. Trial Notices.** On **January 3, 2020**, after conferring with counsel at  
7           the pretrial conference, each party shall file a notice that indicates the amount  
8           of time requested for opening statement and for voir dire. In addition, defense  
9           counsel must indicate if his/her client waives presence at sidebar and jury  
10          questions.

11          **16. Technology Readiness Meeting.** On **January 7, 2020**, any party  
12          seeking to offer video or audio evidence at trial must meet with Court staff at  
13          the location of the trial to verify compatibility with the Court's presentation  
14          systems. The parties shall contact the Courtroom Deputy at (509) 943-8173  
15          to arrange this meeting.

16          **17. Trial.** The jury trial is **SET** for **January 13, 2020**, at **9:00 AM** in  
17          **RICHLAND**. Counsel and Defendant shall be prepared to meet with the  
18          Court at least thirty (30) minutes prior to the commencement of the trial.

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## 18. Summary of Deadlines

All pretrial motions, including discovery motions, <i>Daubert</i> motions, and motions <i>in limine</i> , filed	November 29, 2019
<b>PRETRIAL CONFERENCE</b> <i>Deadline for motions to continue trial</i>	<b>December 19, 2019</b> <b>11:30 AM - RICHLAND</b>
CIs' identities and willingness to be interviewed disclosed to Defendant (if applicable)	<b>December 30, 2019</b>
Grand jury transcripts produced to Defendant Case Agent: CIs: Other Witnesses:	<b>December 30, 2019</b> <b>December 30, 2019</b> <b>December 30, 2019</b>
Exhibit lists filed and emailed to the Court	<b>January 7, 2020</b>
Witness lists filed and emailed to the Court	<b>January 7, 2020</b>
Trial briefs, jury instructions, verdict forms, and requested voir dire filed and emailed to the Court	<b>January 3, 2020</b>
Exhibit binders delivered to all parties and to the Court	<b>January 3, 2020</b>
Delivery of JERS-compatible digital evidence files to the Courtroom Deputy	<b>January 7, 2020</b>
Trial notices filed with the Court	<b>January 3, 2020</b>
Technology readiness meeting (in-person)	<b>January 7, 2020</b>
<b>JURY TRIAL</b>	<b>January 13, 2020</b> <b>9:00 AM - RICHLAND</b>

1       **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and  
2 provide copies to all counsel, the U.S. Probation Office, and the U.S. Marshals  
3 Service.

4       **DATED** this 12th day of November 2019.

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6                               \_\_\_\_\_  
SALVADOR MENDOZA, JR.  
United States District Judge